Sexual Harassment Seminar

Sponsored by

Women's Policy Office
Government of Newfoundland & Labrador

REPORT

Teleconference linking Tetra Sites - March 23, 1992
Hotel Newfoundland - March 23, 1992
Hotel Gander - March 24, 1992
Corner Brook Glynmill Inn - March 25, 1992

Introduction

Approximately 300 persons attended the Sexual Harassment Seminar sponsored by the Women's Policy Office March 23-25, 1992. The seminar was held in St. John's, Gander, Corner Brook and by teleconference which linked 14 different sites throughout the province. The attendance at each of these sites included employees, employers, union representatives, students, members of community groups and interested members of the general public. This wide variety made for some very interesting dynamics. Women and men from very different groups and ages were drawn together by this topic.

This seminar was designed to create dialogue and help answer some of the questions that have recently been raised on the issue. In North America, awareness of sexual harassment has increased over the past year due to media attention paid to the Clarence Thomas - Anita Hill case in the United States. This heightened awareness provided the impetus to design a seminar which would offer several different perspectives on the issue.

Summary of Proceedings

Luanne Leamon, Assistant Deputy Minister of the Women's Policy Office, welcomed participants, explained the role of the Women's Policy Office, why the topic of sexual harassment had been chosen and why it is so important to raise awareness and educate people on this topic.

Laura Trachuk, the keynote speaker, and an Associate at the Cornish Roland Law Firm in Toronto, gave an overview of the topic and touched on some Canadian cases.

"Sexual harassment is about power and about sex," she said. "The harassment is an abuse of the power that the harasser has by virtue of the fact that he is male and sometimes by virtue of his superior position in the workplace. But the focus of the harassment is sexual. A person's sexuality is used to injure her and she is injured because of her sex."

Ms. Trachuk's focus was on workplace sexual harassment because that is where she feels it can do the most damage and it is also where the greatest good can be done to eliminate it. Studies have shown that between 70 and 90 percent of women will be sexually harassed during their working lives. Most women have, or will be, subject to at least one or more of the following behaviours: sexual assault, unwanted touching or patting, leering, sexually suggestive gestures, demands for sexual favours, derogatory or degrading remarks, repeated offensive sexual flirtations, advances or propositions, verbal threats or abuse, inquiries or comments about your sex life, sexually degrading words, sexist jokes, or the displaying of sexually offensive material.

Ms. Trachuk informed participants that the Supreme Court of Canada has itself recognized two forms of workplace sexual harassment. *Sexual coercion* is what the

lawyers call quid pro quo harassment and it is essentially the situation in which one person expects sexual favours of some type from another person in return for some benefit. The benefit may range from keeping one's job to getting a promotion. It is also usually initiated by a person in a supervisory position in relation to the complainant. *Poisoned work environment* is the situation in which your sexuality is used to make your working life miserable. It consists of behaviours that are offensive and include joking remarks, sexually explicit comments, sexually offensive material such as posters and picture jokes, etc.

Sexual harassment happens because men bring certain expectations about women's roles and the bounds of permissable conduct into the workplace where they don't belong. Ms. Trachuk provided several stories concerning sexual harassment that has occurred to women she knows, some of them clients and some acquaintances. The names of the women were changed to protect their identity.

The keynote was followed by a question period, a break, and then a panel discussion. The panelists were Noel Flynn, Judith Vanta and Gladys Vivian.

Noel Flynn is currently the Health and EAP Coordinator with Newfoundland Power, a position he assumed in May of 1990. Prior to this he worked as a social worker in psychiatry, geriatrics, and neurology at the General Hospital Corporation from 1979 to 1990. He is extensively involved in developing a sexual harassment policy at Newfoundland Power.

Mr. Flynn spoke on the topic from an employer's perspective. "Many employees spend almost as much time in the working environment as they do waking hours at home. It makes sense for employers to try and create as positive an environment as possible for their employees, as this will result in a more content person thereby leading to a higher quality of work and improved morale amongst employees. Conversely, if a person works in a negative environment then their work performance is much more likely to deteriorate and significant problems develop for the employer to address," stated Mr. Flynn.

The Canadian Employment Law Guide states that "employers are directed to issue a policy statement concerning sexual harassment." Mr. Flynn gave some details regarding implementing a policy. An official written policy, which defines sexual harassment and outlines in detail what the company procedure is for handling complaints, should be distributed to all employees. Education sessions on the subject should be mandatory for all employees at the time of implementation and as a part of ongoing supervisory training and new employee orientation packages.

Mr. Flynn feels that when it is determined that an employee has sexually assaulted another employee or customer, then appropriate disciplinary action should be taken. In his view, it is crucial to send a clear message to all employees that such behaviour will not be tolerated and it also encourages people who are

being victimized to come forward with a complaint.

Judith Vanta is currently Chair of the Newfoundland & Labrador Federation of Labour Women's Committee. She is also President of the NAPE Local responsible for the Janeway Child Health Centre where she is employed, and a committee member of the Canadian Labour Congress Women's Committee.

Speaking on the issue from a union perspective, Ms. Vanta began by stating that while employers are legally charged with the responsibility for maintaining a workplace free from harassment, unions must take a pro-active approach in order to ensure workers' rights . She explained that "one of the cornerstones of building equality is the principle that every person has the right to dignity and respect. This means being able to work in a harassment-free workplace and participating in a harassment-free union environment."

The following is an example of what Ms. Vanta believes to be an excellent sexual harassment clause for a collective agreement:

> Sexual Harassment
> Both the Employer and the Union consider sexual harassment to be reprehensible and are committed to maintaining an environment in which sexual harassment does not exist. The Employer and Union recognize the right of employees to work in an environment free from sexual harassment and the parties shall undertake to investigate alleged occurrences with all possible dispatch. If sexual harassment of a bargaining unit member has taken place, the Employer shall take action to ensure that the sexual harassment ceases. The victim shall be protected from repercussions which may result from his/her complaint.
>
> Definition of Sexual Harassment
> Sexual Harassment is comprised of sexual comments, gestures or physical contact that the individual knows or ought reasonably to know, to be unwelcome, objectionable or offensive. The behaviour may be on a one time basis or a series of incidents, however minor. It is unsolicited, one-sided and/or coercive. Both males and females may be the victims of sexual harassment.

Ms. Vanta remarked that the policies that are in place may not always support the victim, as the following wording illustrates:

> "all locals will assist the victim of sexual harassment while at the same time assuring the harasser that their local will vigorously defend them, etc., etc."

Ms Vanta believes that the victim deserves the commitment and has the right to the commitment both from employer and union of whatever assistance is

necessary to ensure their emotional well-being and return to work without fear of retaliation or reprisal.

Gladys Vivian has been the Executive Director of the Newfoundland Human Rights Commission since 1986 and has worked with the Commission for the past ten years. Prior to this she worked as a social worker with the Department of Social Services.

Ms. Vivian spoke about the role of the Human Rights Commission in sexual harassment cases. The Human Rights Code, 1988 prohibits harassment on the basis of sex as well as prohibiting sexual solicitation by a person in a position of authority. To harass according to the code means to engage in a course of vexatious comment or conduct that is known or ought reasonably be known to be unwelcome. Because the legislation states that harassment is a course of conduct that is known to be unwelcome, adjudicators are interpreting the legislation to mean that there is some onus on the complainant to advise the harasser that the conduct is unwelcome. However, there are situations where it would not be necessary to advise a harasser that a behaviour is unacceptable. For example, implying that compliance with a sexual solicitation is a condition of employment.

Ms. Vivian informed participants that while the legislation prohibits sexual solicitation by a person in authority, this does not mean that a complaint cannot be brought against a co-worker. Also, a Supreme Court of Canada decision in 1987 made it quite clear that an employer is responsible for the actions of employees. Therefore if an employer is aware of harassment in the workplace but refuses to deal with it, this may increase the employer's liability when a board of inquiry orders damages. The option to file a complaint with the Commission is still there whether you choose to lodge a complaint with your employer or not. The important thing to remember is that there is a time limitation of six months in which to file a complaint under the Human Rights Code and it must be made in writing.

According to Ms. Vivian, the human rights approach is corrective, unlike employer policies which are punitive in nature, setting out punishments for the harasser. "We aim to restore the injured party to the position he or she would have been in had the harassment not occurred. This could include restoring lost job opportunities, providing for lost opportunities for training, lost wages, costs associated with the complaint, and compensation for hurt feelings."

She concluded by saying that the problem will not disappear until everyone learns to separate sexuality and work, and to view sexuality not as a symbol of power but as a special form of communication and intimacy.

Sexual Harassment Seminar

March 23, 1992 Hotel Newfoundland
March 24, 1992 Hotel Gander
March 25, 1992 Glynmill Inn, Corner Brook
7 -10 pm

SPONSORED BY WOMEN'S POLICY OFFICE,
GOVERNMENT OF NEWFOUNDLAND & LABRADOR

AGENDA

7:00 - 7:15	Opening Remarks Luanne Leamon, Assistant Deputy Minister Women's Policy Office
7:15 - 8:00	Keynote Address Laura Trachuk, Associate Cornish Roland Law Firm, Toronto
8:00 - 8:15	Questions
8:15 - 8:30	Break
8:30 - 9:30	Panel Discussion Noel Flynn Health & EAP Co-ordinator Newfoundland Power Judy Vanta, Chair, Women's Committee Newfoundland & Labrador Federation of Labour Gladys Vivian, Executive Director Newfoundland & Labrador Human Rights Commission
9:30 - 10:00	Questions/Discussion

OPENING REMARKS

BY

LUANNE LEAMON, ASSISTANT DEPUTY MINISTER

WOMEN'S POLICY OFFICE

AT THE

SEXUAL HARASSMENT SEMINAR

SPONSORED BY

THE WOMEN'S POLICY OFFICE

MARCH 23-25, 1992

Good evening. On behalf of the Women's Policy Office, welcome to our seminar on sexual harassment. My name is Luanne Leamon. I am the Assistant Deputy Minister responsible for the Women's Policy Office and I'll be your chair for the first part of this evening's session. Some of you may already be familiar with the role of the Women's Policy Office. We are part of the Executive Council, the central co-ordinating department of the provincial government. Our role is to work with all departments to coordinate government initiatives to improve the status of women. This means helping to develop policies and programs which will have a positive effect on women's economic, legal and social status in our province. The staff of the office work with the Minister Responsible for the Status of Women, the Hon. Patricia Cowan, in her role as an advocate for women in the provincial government.

The Women's Policy Office also has a public education role. We publish a number of documents, some of which are in the folders given to you this evening, and others which are on the display table at the back of the room. We have also sponsored a number of workshops and seminars; for example a conference for young women called "Beyond the Rainbow", a workshop on women and economic development, and a workshop for employers on helping their employees to balance work and family responsibilities.

This seminar on sexual harassment has proven to be very popular. Twice as many people pre-registered as what we had originally expected. At St. John's, Gander, Corner Brook and the 14 teleconference locations across the island and Labrador, over 300 people will take part, an indication of the importance of this topic to the public.

Women's Policy Office decided to host this seminar because of the increased number of calls we received requesting information, calls from both employees and employers. Sexual harassment is of course not new; in fact it may be as old as

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when human beings first inhabited the earth. Certainly, it has existed as long as women have been in the paid labour force, but it has only been named as a problem since women themselves have voiced their discomfort with it and recognized their right to live without it.

Last fall, the media attention caused by the Clarence Thomas - Anita Hill case in the United States, raised awareness about the existence of sexual harassment. Although the issue has been highly publicized lately, there is still confusion about what sexual harassment is, exactly, who is responsible and how we ensure an harassment free work environment.

The interest in this topic, as is obvious from the number of people here tonight, is a positive sign. It is an indication that people want change. What we used to brush off as pinching, touching, or lewd comments are no longer matters for private concern. Sexual harassment in any situation is reprehensible, but universities, workplaces, and other institutions are beginning to realize that when it means students cannot learn, employees cannot work, and people are not free to act in an environment of trust and honesty, then the institution also suffers. This is particularly true in situations where relationships are based on power and trust, as between supervisor and employee, or teacher and student.

Organizations, particularly employers, are recognizing that sexual harassment is costly, not only to employee well-being, but also to productivity. The United States Federal Civil Service is estimated to have lost $189 million dollars over a two year period due to sexual harassment. This estimate was based on lost productivity as reported by the victims. Obviously, sexual harassment is impeding business, government, and society.

Sexual harassment will not be stopped by pretending that it isn't happening or simply hoping that it will go away. This is as true for an organization as it is for

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the individual victim of harassment. Employers, universities and community colleges are now recognizing that a greater effort is needed to prevent sexual harassment. In order to achieve this, we need awareness and education. People need to know what sexual harassment is and what to do about it. We need clear policies and real action if sexual harassment is to become obsolete in the work and learning environments of tomorrow.

I would like to thank our speakers this evening who took time out from their busy schedules to prepare for this seminar and be here tonight. I would also like to thank the staff of the Women's Policy Office who spend many hours and extra efforts to organize this seminar. I hope we will all come away with a greater awareness of the issue, and a renewed dedication to change things for the better. Thank you.

KEYNOTE ADDRESS

BY

LAURA TRACHUK, ASSOCIATE

CORNISH ROLAND LAW FIRM, TORONTO

AT THE

SEXUAL HARASSMENT SEMINAR

SPONSORED BY

THE WOMEN'S POLICY OFFICE

MARCH 23-25, 1992

What is Sexual Harassment?

Every day someone asks me that question. When men ask that question, they are asking: "How do I know if I am doing something wrong?" or "What can I get away with?". When women ask that question, they are asking "What do I have to put up with?". Those are essentially legal questions and at least some kinds of sexual harassment is against the law in all jurisdictions in Canada.

The other panelists will speak specifically about what the law says about sexual harassment in Newfoundland. I am going to talk about sexual harassment from a more basic perspective, because we need to understand this as a fundamental equality issue for women.

Sexual harassment is about power and about sex. The harassment is an abuse of the power that the harasser has by virtue of the fact that he is male and sometimes by virtue of his superior position in the workplace. But the focus of the harassment is sexual. A person's sexuality is used to injure her and she is injured because of her sex.

Sexual harassment is a kind of sex discrimination. It happens to women because they are women and women are more detrimentally affected in some ways because of their female sexuality.

When men and women ask me what sexual harassment is, they in fact usually know or have some idea that certain behaviour is sexual harassment. Women know when they have been harassed because they feel badly, humiliated, hurt, diminished, angry, frustrated, guilty, cheap. Men know because they sense they are not playing fair. I know that this is the case, because when men and women ask me what sexual harassment is, they usually go on to include an example. They will ask: "If this happens to me, is it sexual harassment?". So men and women have some idea of where the line is.

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Most sexual harassment stories are related to work and it is workplace sexual harassment that is regulated in all jurisdictions in Canada. It can also happen in school, in your home situation - for example if you are a tenant, it can happen on the street, it can happen to you buying a car. Sexual harassment is not usually prohibited in most of these situations, but that doesn't mean that when you have been humiliated when walking down the street, it is not sexual harassment - it is sexual harassment and it is wrong and it is rational for you to be upset by that, but it is not necessarily something you can do anything about in a legal sense.

I am going to focus on workplace sexual harassment because that is where I think it can do the most damage and that is also where you can do the most about it.

The role of work in people's lives is fundamental to their sense of personal identity, their sense of their own value and of course, it provides the income that impacts profoundly on all other aspects of their lives. That is what makes sexual harassment which can undermine and destroy women's relationship with their work so cruel.

Studies have shown that anywhere between 70 and 90 percent of women will be sexually harassed in their working lives and I think that the difference in those numbers depends on how the question is asked. For example, if women are asked, "Have you ever been sexually harassed?", the numbers will be lower. However, if you ask: "In your working life, have you ever been subject to any of the following actions?", you will find that the numbers are a lot higher. Most women have been subject to at least one or more of the following behaviours: sexual assault, unwanted touching or patting, leering, sexually suggestive gestures, demands for sexual favours, derogatory or degrading remarks directed to your sex, repeated offensive sexual flirtations, advances or propositions, verbal threats or abuse, inquiries or comments about your sex life, sexually degrading words, sexist jokes, the displaying of sexually offensive material. If you have experienced one or more

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of those, you have experienced sexual harassment.

When we talk about sexual harassment in an employment context, we talk about two kinds of sexual harassment. The first is "sexual coercion" and the second is a "poisoned work environment".

Sexual coercion is what the lawyers call quid pro quo harassment and it is essentially the situation in which your boss lets you know that if you don't do him sexual favours, you will be fired, or that if you do him sexual favours, you will get a promotion. Poisoned work environment is the situation in which a man or men that you work with use your sexuality to make your working life miserable. For example: they will call you names usually related to your gender, bitch, slut, something like that; brush against you unnecessarily or outright grab you; leer at you; tell dirty jokes; put pornography on the walls or in your lunch pail; tease you about your sex life; anything that reminds you that you are a woman and there are certain stereotyped roles that you are expected to play as a result.

The Supreme Court of Canada has itself recognized these two forms of workplace sexual harassment. If you want a legal definition, the Supreme Court has defined it as "unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job related consequences for the victims of the harassment".

In my view, in that definition "conduct of a sexual nature" should be defined as any conduct referring to a person's sex. More broadly, I think of sexual harassment as occurring any time a person's sexuality is used to detrimentally affect her work.

Now this may be difficult to put into context in the abstract, so I am going to tell you some stories about some women that I know, some of them have been my

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clients, some are just people I know. Their names have been changed even though many of their stories are now in the public domain.

The first story I want to tell you is the story of Cathy. Cathy worked in a steel town in Ontario. During the second world war, her grandmother got a job in the steel mill doing what was traditionally men's work. Of course, she was fired when the men came back from the war, but she always talked to Cathy about how satisfying it had been to do that work. Cathy herself wanted to work in the steel mill because she wanted the opportunity to do that work and it was also the best paying work in town. She kept applying over and over again for a job without any success. Eventually, however, this company was told by the Human Rights Commission that it had to hire women and Cathy was the first woman in the door. It wasn't too long before most of the women were laid off because we went into the 1980's recession and they were the most junior workers at the time, but Cathy herself was senior enough to keep her job.

From the beginning, however, she experienced problems. First of all, as a clear signal that women weren't welcome and weren't expected to stay long, the company didn't bother to build a women's washroom. They had set up a trailer in the lot outside the building where Cathy worked. It was about a 5 to 10 minute walk in all weathers for her to get there. Also, this washroom was hardly ever cleaned, was usually lacking in supplies and was often out of hot water. Of course, it was necessary for the women to shower because it is a pretty dirty job working in a steel mill and they had to deal with a lot of toxic substances. Cathy was a stationary engineer and therefore her job required her to watch machines for emergency situations. Therefore, if she took off for 10 or 15 minutes every time she had to go to the washroom, it could be a problem. She brought this to the attention of her supervisor and his response was essentially to limit her use of the washroom. Also, since she had no washroom, she couldn't wash all of the toxic substances she worked with off her hands and had to wear plastic bags over her

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hands to eat her lunch. She complained about all these things, but nothing was done about it.

One of her foremen started physically harassing her. He would come up and fondle her and kiss her and so on. When she complained about that, nothing was done to help her. In fact, what happened was that the foreman and supervisors started to bring reprisals against her. For, example, the foremen and her co-workers would not train her. She needed to be trained in order to carry on with her work and get the various tickets to progress in her trade. They used to leave pornographic pictures in the drawer in her work station so she would open her drawer when she came into work and see photographs of women or drawings of women performing oral sex etc. on men. This was a clear indication of what her co-workers thought of her and what role she should be playing. She complained about these things, but the situation got worse and worse until she was told that if she wanted to go out and use the washroom, she had to ask permission over the intercom throughout the entire building. This was the last straw and staged a work refusal.

In Ontario, under the Occupational Health & Safety Act there is a provision that allows you to refuse to perform unsafe work and there is a procedure that follows if you do that. Newfoundland has a similar provision. She argued that the work was unsafe because first of all, the harassment had had an incredible physical and psychological effect on her. She got headaches, nausea, stomach pains, she was down to 100 pounds. She couldn't sleep and suffered other stress-related psychological problems. These were all symptoms consistent with post-traumatic stress syndrome, which is a psychological illness suffered by people who have been sexually assaulted or sexually harassed. Therefore, Cathy said that because the harassment was causing that physical and psychological illness, it was unsafe for her to work there. She also said that her job required her to be alert at all times in order to do it safely and this situation was so distracting that it made her

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unable to perform her work safely.

The Company and the Ministry of Labour did not accept that this was an unsafe work situation under the law, so the matter went to a hearing. The hearing itself took many months and in the end, the employer settled. But, Cathy continues to experience physical symptoms to some degree to this day, particularly if she ever has to talk about what happened to her working for the steel company.

Carol was a young woman living in a small town in Ontario. She had just finished University and had her first job, when she was offered a job with the local MP. This was a great promotional opportunity for her. She was very excited and her family was very proud of her.

When she started working in the Ottawa office, the situation was very strange. There were two other women working in the office and they had a tremendous amount of work to do. However, the MP kept refusing to give Carol much work to do. He seemed to want her to trail along behind him everywhere, but she didn't actually have much to do. He liked to have lunch with her and so on and talk about work, but he never really gave her much to do. When she asked for work so she could relieve the other two women, he told her it wasn't her business what work he decided she should do.

He also did other strange things. For example, when she did have work for him or when he was giving her work, he wanted her to come around his side of the desk and lean over him in order to get the work, rather than just hand it across the desk. Or he would come around her side of the desk and lean over her, etc. He also liked to have her sit beside him on the couch in his office and talk to her there. He wanted her to sit quite close to him, not on the other side of the couch. She would always draw away, however, indicating in ways like that that she was not interested and really didn't want to be close to him. As a result of not playing

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along with this game, he started telling her that the little work that she did was poor and she had personality problems. Eventually he said to her, "why don't you pick up a couple of steaks and a bottle of wine and I'll come over to your place for dinner tonight and we'll talk about your performance appraisal".

Now this was in the late '70's when sexual harassment was not in the media the way it is today, but Carol knew there was something wrong with this. She therefore filed a human rights complaint and went through a long hearing process. It was determined that the MP's treatment of her had been sexual harassment, but eventually the MP won on a technical argument that the processes of the Canadian Human Rights Commission were biased.

Molly's story is a particularly sad one. Molly was a young single mother and she came from a poor family and had very little education. But one day she got a job in a company that made soap and other kinds of related domestic products. She was determined that she was going to use this job to escape the trap she was in and she worked very, very hard. She took any kind of overtime that was offered and was a quick learner and tried to pick up any new jobs that she could. She worked her way up into better and better paying jobs and eventually she got a job as a lead hand on an assembly line.

This was work that women hadn't traditionally held in this company and as soon as she got there, she started to experience real difficulties. Her male co-workers on the line just wouldn't accept her. Furthermore, they called her sexual and racial names and showed her drawings of her performing oral sex on them. They also sabotaged her line and one day all the men on her line walked off of it. This went on for a long time and she kept trying to fight it. She complained to the company and the union, but nothing was done. She was determined not to give up, but one day the matter reached a crisis when her co-workers carved a 12 inch penis out of a soap, wet the end of it and sent it down the assembly line to her.

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This was just one humiliation too many and she went to her supervisor and complained. He took the object off the line but didn't do anything about it.

Within a few days Molly had completely fallen to pieces and tried to kill herself. She tried to come back to work a few months later, but the same kind of behaviour still occurred and she went off work again with another breakdown and tried to kill herself again. She filed a human rights complaint and also filed a claim for workers' compensation benefits.

Workers' compensation benefits had never been awarded for injuries experienced as a result of sexual harassment before, and the Workers' Compensation Board in Ontario would not agree to pay her those benefits. However, after fighting about the matter through a couple of levels of appeal, she was awarded workers' compensation benefits. The factory she worked in has since closed down. We are hoping that she will be able to get on with her life and get another job.

Betty was a cleaning supervisor for the Department of Defence in Sudbury. Cleaning supervisors had traditionally been male, so she was thrilled to get the job and she desperately needed it. As soon as she got this job, she was continually asked by her supervisor about her personal life and her sexual relationship with her husband. The supervisor then started to proposition her and told her that if she didn't grant certain sexual favours, he would fire her. She only had two months left in her probation, so she went along with his requests for sexual favours, but having given in once, the harassment escalated over the next two months until he attempted to assault her. Finally, she complained and filed a human rights complaint. After a very, very long battle, she was successful and the Supreme Court of Canada found that sexual harassment had occurred and significantly, that not only the supervisor, but the employer, the Department of National Defence, was responsible for it.

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Sue was a very young woman who got her very first job as a waitress. Right from her first day of work there, she started having trouble with a cook. The cook used to call her names and say she had a "fat ass", but that it was O.K. because he liked women like that. He also used to make comments about her breasts, talk about her genitals using the word and suggested that they have sex together and so on. Those of you who have worked as waitresses, know that the cook has a lot of power in a restaurant because he can hold up your orders, which mean customers give you a hard time, management gives you a hard time and you don't get your tips. That kind of thing used to go on every time she complained to him or objected to the way he was talking to her.

Eventually the situation reached a climax. The cook made a comment to her one day, she yelled back at him and he slapped her. She called the police and pressed charges. But the case was eventually thrown out because of delay in bringing the matter to trial. Sue did not file a human rights complaint because she didn't know that she could, nor did she know that her employer, who was well aware of the situation, had a legal obligation to stop it from happening.

Nina is a young executive working in a company which provides promotional services. She had a contract with another company and her contact with that company, who was an executive there, told her that they were going to have a new position which she would be well qualified for and for which she should apply. She did apply for the position, which would have been a career advancement for her. She went through an application process, was interviewed by a number of people and continued to meet with the executive, who claimed that he had the ultimate hiring authority for the position. Eventually, the day came when she expected that she was going to be told that she had the job. She had every confidence that she would get it, because the Executive had told her all along that she was the most qualified person and that he was the person to make the decision. However, he invited her to lunch that day and then told her "Look I

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can't hire you for this job, even though you are the most qualified person. I'm too attracted to you sexually and therefore, I can't work with you".

Here was a situation where Nina was being told that she can't have the job because her potential employer couldn't stop himself from sexually harassing her. This is a new twist to an old problem, but it is no less sexual harassment, and it shows how sexual harassment is essentially sex discrimination.

Finally, I am going to tell you the story of Sarah because it is an example of just how complicated these matters can be. Sarah was a ticket agent in a major transportation company in Canada whose supervisor thought he was in love with her. She knew that, and although it made her uncomfortable, it wasn't a particular problem for her because he didn't treat her any differently than anyone else who worked for him. However, one day she started having a relationship with a co-worker and everything changed. All of a sudden her supervisor started giving her bad performance appraisals and lousy shifts and he started following her around. She filed a complaint of sexual harassment.

The employer and supervisor said it was not sexual harassment because the supervisor was not trying to make her have a sexual relationship with him. But we argued that the supervisor was punishing her because she was not complying with his stereotyped idea of her. We were eventually able to convince the Human Rights Commission that this was in fact sexual harassment and they proceeded with a complaint.

Sexual harassment in the workplace is a reflection of the ugly side of male/female relationships in society. It cuts across all class, race and age lines. It happens in my view, because men bring certain expectations about women's roles and the bounds of permissable conduct into the workplace where they don't belong. It is not a situation that, we as a society, can tolerate. It takes an unacceptable toll on the health of women workers and acts as a barrier to their equal access to work.

SPEAKING NOTES

OF PANELIST

NOEL FLYNN, HEALTH & EAP CO-ORDINATOR

NEWFOUNDLAND POWER

AT THE

SEXUAL HARASSMENT SEMINAR

SPONSORED BY

THE WOMEN'S POLICY OFFICE

MARCH 23-25, 1992

Overview

The issue of sexual harassment has to be examined in the larger context of historical change and the changes which our society is currently undergoing. It is one of the manifestations of a social injustice which has existed since the beginning of recorded history, but which is now being challenged by peoples everywhere. The core cause of sexual harassment is the inequality between women and men at almost every level of the social fabric.

Historically people have been resistant to social change both individually and collectively. In retrospect we can see that most of this resistance was rooted in the desire to maintain the status quo or to hang on to some form of power which an individual or group exercised over someone else. However, the sheer force of such changes has inevitably been too much for even monarchs, governments and whole societies to suppress.

The religious, scientific and political leaders of the middle ages refused to accept the logical scientific discoveries of Galileo and Copernicus and tried to dismiss them out of hand. Ignorance can not change the truth of a situation but merely obscure it temporarily. The reluctance of rulers to allow the common person to actively participate in the governing process is being swept aside even today as we witness the emergence of more and more countries operating under some form of democratic system.

The banishment of the appalling system of apartheid in South Africa, a battle which was fought not that long ago in the United States, is again a demonstration that a stagnant and decaying society cannot stop the evolution of social progress towards the establishment of justice at every level of human society.

Since the beginning of time men have exercised some form of power over women. At its most basic level it is physical control but it often shows itself in more sophisticated and subtle forms which are just as damaging as the physical violence

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to which many women are constantly subjected. Sexual harassment is just one variation of these other prejudices which are often exhibited in the working environment.

The challenge then is clear both for our society and businesses - will we accept the concept of equality between men and women as a fact whose time has come, or do we continue to ignore the issue and get dragged kicking and screaming into the next century towards its inevitable establishment despite our resistance?

Forms of Harassment

The two major types of sexual harassment are the "poisoned work environment" and the "quid pro quo" arrangement.

The poisoned work environment consists of behaviors that are offensive and include joking remarks, sexually explicit comments, sexually offensive materials such as posters and picture jokes etc.. With the advent of computer use it is now possible for one person to harass another through electronic technology. Behavior that was once acceptable (especially in a predominantly male working environment) may no longer be acceptable. The effect of comments or behavior may override the intent with which they were made. This presents a significant challenge for employers but one which they ignore at their own peril.

The "quid pro quo" arrangement is when one person expects sexual favours of some type from another person in return for some benefit. The benefit may range from keeping one's job to getting a promotion. This type of behavior is generally more covert than the poisoned work environment behavior and is less likely to be witnessed by other employees. It is also usually initiated by a person in a supervisory position in relation to the complainant.

Employers Responsibility

Many employees spend almost as much time in the working environment as they

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do waking hours at home. It makes sense for employers to try and create as positive an environment as possible for their employees, as this will result in a more content person thereby leading to a higher quality of work and improved morale amongst employees. Conversely, if a person works in a negative environment then their work performance is much more likely to deteriorate and significant problems develop for the employer to address.

As the Anita Hill/Clarence Thomas hearings and their subsequent impact made painfully clear, sexual harassment is a significant issue in our society and in the workplace in particular. There is no doubt that it is certainly a negative factor in the business world. The cost to companies can be measured in lost productivity as well as a diminished image within the community.

It is extremely important that business not see this issue as one that can be drawn along traditional lines such as Union versus Management. This is a subject that must rise above partisan attitudes if it is to be resolved.

The Supreme Court of Canada in its judgement in the Robichaud case was quite clear that employers are legally liable for sexual harassment behavior of their employees. There have been a number of recent rulings by provincial Human Rights Commissions which reflect this ruling. Last fall, a company in Kingston, Ontario was fined $20,000 and its sales manager was not allowed to be alone in the work environment with any female employees, as a result of his sexual harassment of a female employee. In addition the company had to arrange for all of it employees to attend educational sessions on sexual harassment at the companies expense.

Implementing a Policy

The Canadian Employment Law Guide states that "employers are directed to issue a policy statement concerning sexual harassment." This should be in the form of

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an official written policy which is distributed to all employees. This policy should define sexual harassment and outline in detail what the company procedure is for handling complaints. Education sessions on the subject, utilizing videos and case discussions, should also be mandatory for all employees at the time of implementation of the policy. In addition, this should be a part of ongoing supervisory training and any new employee orientation package.

It would also be helpful to have a clause in any collective agreement between companies and unions. This can be a general statement to the effect that the Union and Company are both committed to the goal of creating a workplace environment free from sexual harassment.

It is important that confidentiality be respected to the greatest degree possible given that it will likely be necessary to interview several people in the process of investigating any allegations of harassment.

One of the major problems with a person taking a complaint to the Human Rights Commission is the amount of time it takes to go through the whole process until the matter is resolved. It is not unusual for such cases to take a year or more from beginning to end. It is extremely vital that companies put a procedure in place that ensures any complaints will be processed as expeditiously as possible. It is emotionally and psychologically draining for both the complainant and respondent in these cases and it is a disservice to both parties to have the process drag on any longer than is absolutely necessary.

When an employee is determined to have sexually harassed another employee or customer then appropriate disciplinary action should be taken. This is crucial as it sends a clear message to all employees that such behavior will not be tolerated and it also encourages people who are being victimized to come forward with a complaint.

SPEAKING NOTES

OF PANELIST

JUDITH VANTA, CHAIRPERSON

NEWFOUNDLAND AND LABRADOR

FEDERATION OF LABOUR

AT THE

SEXUAL HARASSMENT SEMINAR

SPONSORED BY

THE WOMEN'S POLICY OFFICE

MARCH 23-25, 1992

Employers are legally charged with the responsibility for maintaining a workplace free from harassment. However, as with health & safety, we know from long experience that unions must take a pro-active approach to ensure workers' rights.

One of the cornerstones of building equality is the principle that every person has the right to dignity and respect. This means being able to work in a harassment-free workplace and participating in a harassment-free union environment.

The situation of a union member sexually harassing another member or a manager sexually harassing a worker is distasteful and divisive. However, unions must, they have no choice, but to take a stand that harassment is completely unacceptable behaviour, and will not be tolerated, regardless of who the perpetrator is. Offenders must be held accountable for their behaviours, and any resolve of a harassment complaint must reflect the serious nature of such acts, and send a clear signal that they will not be tolerated.

I would like to give you an example of an excellent sexual harassment clause for a collective agreement:

> Sexual Harassment
>
> Both the Employer and the Union consider sexual harassment to be reprehensible and are committed to maintaining an environment in which sexual harassment does not exist. The Employer and Union recognize the right of employees to work in an environment free from sexual harassment and the parties shall undertake to investigate alleged occurrences with all possible dispatch. If sexual harassment of a bargaining unit member has taken place, the Employer shall take action to ensure that the sexual harassment ceases. The victim shall be protected from repercussions which may result from his/her complaint.

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Definition of Sexual Harassment

Sexual Harassment is comprised of sexual comments, gestures or physical contact that the individual knows or ought reasonably to know, to be unwelcome, objectionable or offensive. The behaviour may be on a one time basis or a series of incidents, however minor. It is unsolicited, one-sided and/or coercive. Both males and females may be the victim of sexual harassment.

Sexual harassment may involve favours or promises of favours or advantages in return for submission to sexual advances, or alternately, the threat of reprisal for refusal. Sexual harassment can be expressed in a number of ways which may include:

- unnecessary touching or patting
- suggestive remarks or other sexually aggressive remarks
- leering (suggestive staring) at a person's body
- demand for sexual favours
- compromising invitations
- physical assaults.

This certainly is a reasonable protection for workers to which an employer should be willing to agree. However this clause was achieved by workers in eleventh hour bargaining, only achieved by holding steadfast to the belief that we would strike to obtain this clause. The Government, as the employer, hesitated with objection to the word victim - stating the use of the word victim implied that the harassment actually occurred. Repulsive to say the least.

I would like to relate to you a story, a factual incident of sexual harassment.

During the round of negotiations where the union obtained the sexual harassment clause, we had a reported case of this nature. There was a man

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with 25 years of service accused of sexual harassment and was fired. During the investigation more women came forward to acknowledge that they also were sexually harassed.

The union decided not to represent this man as it was the stand, the strong stand, of the negotiating team during the strike vote in which the sexual harassment clauses were obtained that if a member was found guilty of sexual harassment that we would not represent the harasser.

What do you think happened next? The community and co-workers supported the harasser asking the union to represent him, as they felt the penalty was too severe.

I ask you is there any penalty too severe for this? Think about the victims.

Since we were successful in negotiating this sexual harassment clause into the collective agreement more and more incidents have been reported. Not all incidents are of the nature that warrant discipline, however, a shop steward can intervene and settle certain incidents to everyone's satisfaction. They can also keep a watchful eye to ensure a harassment-free workplace.

However with time, and with more and more cases reported, the union has had to face the issue of fair representation which means that the union is obligated to represent fairly everyone in the bargaining unit for which they are certified as the bargaining agent. Let me give you another example:

A worker is charged with physical sexual harassment. As a result the worker is fired. The case is tried in court, the person is found guilty, and serves a very short sentence. Should the union represent the harasser?

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The union refused to represent the harasser in arbitration. However, the harasser, as a union member, has the right to appeal such a decision to the Labour Relations Board.

The collective agreement had a simple policy which stated the definition of sexual harassment and that it would not be tolerated. According to the Labour Relations Board a policy must contain a full definition, representation procedures, investigation procedures, education, conferences, etc.

This union did not have such a policy in place and was ordered by the Labour Relations Board to represent the harasser in arbitration.

I want to emphasize to every union person here that having a policy in place does not mean that harassers will not be represented by your union. Research, dissect and restructure your policy to ensure adequate support of the victim. Circulate the policy to every member of your union and always update as new wording evolves.

And, of course, unions have to have mechanisms in place to deal with sexual harassment during union functions. Let's not be naive, this could go on in any environment; be it a union function or workplace.

The policies that are in place may not always support the victim, just listen closely to this wording:

> "all locals will <u>assist</u> the victim of sexual harassment while at the same time assuring the harasser that their local will <u>vigorously defend</u> them, etc., etc.

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The experience of harassment can be overwhelming for the victim. People often react with shock, humiliation and intense anger. The victim deserves the commitment and has the right to the commitment both from employer and union of whatever assistance is necessary to ensure their emotional well-being and return to work without fear of retaliation or reprisal. Victims usually blame themselves and find it very difficult to come forward so when they finally do they must be given lots of support and encouragement , and care must be taken regarding confidentiality.

I would like to leave you with this thought. Sexual harassment has nothing to do with affection, flirtation, romance or love affairs, when both parties consent freely to the relationship. It is a violent act. Sexual harassment is about power.

SPEAKING NOTES

OF PANELIST

GLADYS VIVIAN, EXECUTIVE DIRECTOR

NEWFOUNDLAND HUMAN RIGHTS COMMISSION

AT THE

SEXUAL HARASSMENT SEMINAR

SPONSORED BY

THE WOMEN'S POLICY OFFICE

MARCH 23-25, 1992

The Human Rights Code, 1988 prohibits harassment on the basis of sex as well as prohibiting sexual solicitation by a person in a position of authority. To harass according to the code means to engage in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome. Harassment may include telling sexist jokes in the workplace; making derogatory or offensive remarks about ones pregnancy or dress; inquiring or commenting about an individual's sex life and/or the displaying of sexually offensive material. Because the legislation states that harassment is a course of conduct that is known to be unwelcome, adjudicators are interpreting the legislation to mean that there is some onus on the complainant to advise the harasser that the comment or conduct is unwelcome. The Human Rights Commission received a decision from a Board of Inquiry regarding sexual harassment in central newfoundland which dismissed the complaint based on the facts and circumstances of the complaint. The supervisor respondent had made several comments to a divorced women noting that all she needed to improve her depression was a man; or someone to rub her in the right place; and frequently asked her if she found a boyfriend yet. The Board ruled that the comments were inappropriate for the workplace but went on to say that the complainant had been assertive in other employment matters and expressed the opinion that the onus was on her to let the supervisor know that the comments were unwelcome. The respondent brought forth witnesses before the Board of Inquiry who expressed the opinion that this type of exchange was the norm in this particular work place. The lawyer for the complainant called two witnesses who had encountered similar conduct and found it offensive. These witnesses admitted, however, that when they told the supervisor the comments were unwelcome, the supervisor discontinued the offensive behaviour.

I should note that there are situations where it would not be necessary to advise a harasser that a behaviour is unacceptable. For example, implying that compliance with a sexual solicitation is a condition of employment. Any reasonable person

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wold know that to require sexual favours for a good performance review or a promotion would be unwelcomed.

While the legislation prohibits sexual solicitation by a person in authority, this does not mean that a complaint cannot be brought against a co-worker. What tends to be important in those cases, is the manner in which the harassment is handled by the victim.

A Supreme Court of Canada decision in 1987 made it quite clear that an employer is responsible for the actions of employees. Thus, if a complainant advises a supervisor or manager that she is being harassed by a co-worker and the manager refuses to deal with the matter to ensure the complainant can work in an environment free from harassment, this may well increase the employer's liability when a board of inquiry orders damages.

One thing we should keep in mind is that the harassment would not have to had occurred in the workplace in order to have a complaint under the Human Rights Code. For example, complaints could be brought forward by a women who is told at the company picnic that the only way she would get a raise would be if she sleeps with the boss or by a student who is approached by a professor at a party and told she wold get an "A" in her paper if she was a little more generous with her sexual favours.

While I have frequently referred to the complainant as "she", I must note that while most complaints are from women, we do receive complaints from males. Sexual harassment is an unpleasant and unwanted experience whether you are male or female and the human rights legislation offers equal protection to both sexes.

Once a complaint is brought to the commission the respondent cannot successfully

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defend himself by saying I did not intend any harm by my comments. The courts, in interpreting human rights legislation, have repeatedly said that it is the effects of the harassment on the complainant which is important and not the intent of the harasser. Also, unlike criminal cases, human rights complaints do not have to be proven beyond a doubt that the harassment occurred. Complaints can be substantiated on the balance of probabilities. If the respondent denies a behaviour occurred an we identify similar fact evidence during the investigation, the board may well say on the balance of probabilities that the behaviour did occur.

Many employers now have policies prohibiting harassment in the workplace. This does not bar an individual from bringing a complaint to the human rights commission. Even where a complaint is made with the employer and it is not resolved to the satisfaction of the complainant, there is still the option to file a complaint with the commission. The important thing to remember is there is a time limitation of six months in which to file a complaint under the Human Rights Code. Employers who have an internal procedure for dealing with harassment complaints, may well want to protect themselves from a later action by advising the complainant of the time limitations in which to file a complaint with the commission.

Unlike employer policies which are punitive in nature, setting out punishments for the harasser, the human rights approach is corrective. We aim to restore the injured party to the position he or she would have been had the harassment not occurred. This could include restoring lost job opportunities; providing for lost opportunities for training; lost wages; costs associated with the complaint and compensation for hurt feelings.

The legislation provides for protection for complainants against retaliation for having brought a complaint to the human rights commission. There was a case

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out of British Columbia last year where the respondent commenced court action alleging slander against a person who complained to the B.C. Council of Human Rights of sexual harassment. The complainant was successful with her complaint before a board of inquiry and went on to file the second complaint alleging the court action constituted retaliation. That complaint was also upheld before a board of inquiry and the respondent had to pay up a second time.

Complaints to the Human Rights Commission must be made in writing. The complaint forms will be completed by staff of the commission. We need to ensure that the details are in keeping with the provisions of the legislation and also that they do not indicate to the respondent how the Commission intends to prove the complaint. That is, witnesses names and documents would not be noted in the complaint form. A detailed statement would be taken from the complainant at a later date.

The legislation requires that we notify the respondent prior to commencing an investigation. A copy of the complaint from is sent to the respondent by registered mail and a reply is requested. Based upon the reply and the complaint, the officer will plan the investigation. If a settlement is reached during the investigation and approved by the commission, the file is closed and the names of the parties and the details of the complaint remain confidential. Where a settlement cannot be effected, the commission can order a Board of Inquiry. The adjudicator at a Board of Inquiry has very broad powers in issuing an order of settlement which is legally binding on the parties. Either party can appeal the decision to the court. The decisions are in writing and are published in the Canadian Human Rights Reporter. Copies would also be available through our office.

In concluding, I would say that ignoring the issue of sexual harassment will not make it go away. When we confront and discuss the issue, changes can take place. The problem will not disappear, however, until everyone learns to separate sexuality and work, and to view sexuality not as a symbol of power but as a special form of communication and intimacy.